



April 30, 1999

Ms. E. Cary Grace  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR99-1191

Dear Ms. Grace:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123666.

The City of Houston (the "city") received a request for information concerning the victim of a shooting, the investigation of that shooting, and also information about seven named police officers. You submitted to this office for review documents responsive to the request that are labeled as Exhibits 2 through 4. You assert that Exhibit 2 is excepted from disclosure under chapter 143 of the Local Government Code in conjunction with section 552.101 of the Government Code. You contend that the remaining documents are excepted from disclosure under sections 552.103(a) of the Government Code. You additionally assert the applicability of section 552.108 specifically to the documents in Exhibit 3.

Section 143.089(a) of the Local Government Code provides for the maintenance of a police civil service file and outlines what documents must be kept in that file. Section 143.089(b) and (c) restrict certain types of information from being placed in a civil service file:

(b) A letter, memorandum or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to substantiate the charge of misconduct.

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by subsection (a)(2) shall be removed from the employee's file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

- (2) the charge of misconduct was not supported by sufficient evidence.

Information that section 143.089(b) and (c) prohibit from being placed in the civil service file may be maintained in an internal file maintained by the department, as provided in section 143.089(g):

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

The court in *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), addressed the availability of information that is contained in the department's internal file pursuant to section 143.089(g). The court determined that section 143.089(g) makes confidential any records kept in a department's internal file. As you assert that Exhibit 2 is an internal departmental file maintained pursuant to section 143.089(g), we agree that it is confidential and may not be released.

We note, however, that no such confidentiality provision governs information that is maintained in the civil service personnel files pursuant to section 143.089. Information maintained in the civil service personnel files must generally be released to the public upon request, unless some provision of chapter 552 of the Government Code permits the civil service commission to withhold the information. Local Gov't Code § 143.089(f); Gov't Code §§ 552.006, .021; Open Records Decision No. 562 at 6 (1990) (construction of Local Gov't Code § 143.089(f) provision requiring release of information as required by law).

You assert that section 552.103(a) is applicable to the remaining documents, identified as Exhibits 3, 3a, 3b, and 4, which include offense reports and civil service personnel records. To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). You have demonstrated that litigation involving the city is reasonably anticipated, and our review indicates that the records at issue are related to that anticipated litigation. Thus, the records at issue may generally may be withheld from disclosure pursuant to section 552.103(a).<sup>1</sup>

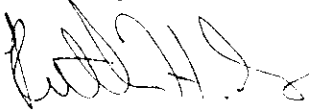
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<sup>1</sup>We note that the city has the discretion to release the non-confidential information at issue. We also note that the applicability of section 552.103(a) generally ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

However, neither section 552.103 nor section 552.108, the other asserted exception to disclosure, protect the front page offense report information from disclosure. *See* Gov't Code § 552.108(c) (basic offense information not protected under section 552.108); *see also* Open Records Decision No. 597 at 3 (1991) (front page offense report information generally not protected under section 552.103). We also note that in making the determination that section 552.103(a) is applicable to the remaining records, we assume the opposing party in the anticipated litigation has not seen the records. Once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', is written over a horizontal line.

Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref: ID# 123666

encl. Submitted documents

cc: Ms. Vicki Pinak  
Pinak & Associates  
440 Louisiana, Suite 2100  
Houston, Texas 77002  
(w/o enclosures)